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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/781,121	02/18/2004	Floyd Backes	160-031	1979
34845	7590	03/08/2006	EXAMINER	
STEUBING MCGUINNESS & MANARAS LLP 125 NAGOG PARK ACTON, MA 01720			PHILPOTT, JUSTIN M	
			ART UNIT	PAPER NUMBER
			2665	

DATE MAILED: 03/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/781,121

Applicant(s)

BACKES ET AL.

Examiner

Justin M. Philpott

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 December 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) 6-10 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>20051004</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims 1-5 have been considered but are moot in view of the new ground(s) of rejection. Specifically, the newly added limitation of "ascertaining at least based in-part on signal strength of transmissions" in independent claim 1, which applicant argues is not taught by the previously cited prior art, is clearly taught by the newly cited art of Slovin as discussed in the following office action. Accordingly, applicant's argument is moot.

Election/Restrictions

2. Newly submitted claims 6-10 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: claims 6-10 are directed to an invention for associating a wireless device solely based upon comparative data rate information whereas the originally presented claims 1-5 are directed to invention for associating a wireless device based upon signal strengths of transmissions of a current and alternate access point.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 6-10 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Objections

3. Claims 4 and 5 are objected to because of the following informalities:

“ ‘x’ samples” and “ ‘y’ samples” (claim 4, lines 5 and 7) are indefinite terms since it is unclear what x and y are referring to. Since it would appear, yet it is not certain, that x and y are most likely referring to real numbers, the claim should be amended accordingly to further clarify what “x” and “y” are. For example, the claims may be amended as follows: “samples, wherein “x” is an integer,” (line 5) and “is an integer less than” (line 6) in order to clearly define applicant’s use of “x” and “y” in the claim. Appropriate correction is required.

Additionally, “the access point” (claim 5, line 2) should be changed to “the alternative access point” in order to clarify which access point, current or alternative, reference is being made to.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Application Publication No. US 2003/0036374 by English et al. in view of U.S. Patent No. 6,144,855 to Slovin.

Regarding claim 1, English teaches a program product for use by a wireless device (e.g., mobile node 902a, see FIGS. 9 and 10) in a wireless communications environment, the program

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product comprising a computer readable medium having embodied therein a computer program for storing data (e.g., see paragraph 0168 regarding position calculation, inherently comprising such a program), the computer program comprising: logic for associating the wireless device with a current access point on a first channel (e.g., see paragraph 0170, particularly lines 9-17 regarding mobile node 902a associating with one of access points 904a or 904b, inherently comprising one or more respective channels within respective radio coverage areas 1012 and 1014; see also paragraphs 0076, 0100, 0141 and 0163 regarding channels); logic for ascertaining by the wireless device whether the wireless device should attempt to associate with an alternative access point operating on a second channel (e.g., see paragraph 0170, particularly lines 9-17 regarding mobile node 902a makes the decision of which access point 904a or 904b to associate with); and logic for requesting association with the alternative access point if it is ascertained that the wireless device should attempt to associate with the alternative access point (e.g., see paragraph 0180 regarding the handoff of communications to a new access point; see also generally paragraphs 0146-0181).

However, English may not specifically disclose the ascertaining is based at least in-part on signal strengths of transmissions from the current and alternative access points.

Slovin, like English, also teaches an apparatus for use by a wireless device for associating with access points (e.g., see col. 1, line 35 – col. 4, line 35), and specifically discloses the well known teaching for ascertaining by a wireless device to be based at least in-part on signal strengths of transmissions from a current and an alternative access point (e.g., see col. 9, lines 6-24 regarding selecting the best access point according to the RSSI, and see col. 1, lines 62-63 clearly identifying the term of art RSSI as “radio signal strength intensity”). Additionally, the

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teachings of Slovin provide an equalized ratio of available channels and demanded channels over a plurality of stations and a plurality of access points, for overall improved operation (e.g., see col. 1, lines 35-58 as well as col. 1, line 59 – col. 4, line 35). Thus, at the time of the invention, not only was it well known in the art for ascertaining to be based at least in-part on signal strengths of transmissions from a current and an alternative access point (e.g., see col. 9, lines 6-24 regarding selecting the best access point according to the RSSI), it would further have been obvious to one of ordinary skill in the art to associate access points as taught by Slovin in order to provide an equalized ratio of available channels and demanded channels over a plurality of a stations and a plurality of access points, for overall improved operation (e.g., see col. 1, lines 35-58 as well as col. 1, line 59 – col. 4, line 35).

Regarding claim 2, English teaches logic for automatically collecting, by the wireless device, information about access points operating on other channels (e.g., see paragraph 0178 regarding mobile node 902 being informed about information regarding access points 904a, 904b and 904c; and also paragraphs 0076, 0100, 0141 and 0163 regarding channels).

Regarding claim 3, English teaches the logic for ascertaining ascertains that the wireless device should attempt to associate with the alternative access point operating on the second channel if the alternative access point on the second channel is closer than the current access point (e.g., see paragraphs 0170-0180 regarding mobile node 902 determining which access point to associate with based upon proximity to the access points).

Regarding claim 4, English teaches the ascertaining is by calculating a first biased distance between the wireless device (e.g., mobile node 902) and the current access point based on “x” samples (e.g., see paragraphs 0167-0168 and 0175 regarding the impulse radio unit 1016

within mobile node 902 triangulating the current position of the mobile node 902, inherently comprising three or more samples); calculating a second biased distance between the wireless device and the alternative access point operating on the second channel based on "y" samples (e.g., see paragraphs 0175-0180 regarding mobile node 902 estimating such a distance by comparing the current position of the mobile node 902 with a map generated in step 1104 of FIG. 11 which comprises the position of a different access point such as 904b or 904c) where "y" (e.g., known position of mobile node 902 and known position of access point 904b) is less than "x" (e.g., three or more samples for triangulating the current position of mobile node 902); and ascertaining that the alternative access point operating on the second channel is closer than the current access point if the second biased distance is less than the first biased distance (e.g., see paragraphs 0164-0181, particularly paragraphs 0170 and 0175-0180 regarding mobile node 902 determining which access point to associate with).

Regarding claim 5, English teaches sending a message to the alternative access point operating on the second channel (e.g., see paragraph 0171 regarding mobile node 902a deciding to associate with a different access point and handing off communications to the different access point after authenticating with the different access point).

Double Patenting

6. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

7. A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground

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provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

8. Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

9. Claims 1-5 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-6 of copending Application Nos. 10/780,775; 10/780,804; 10/781,157; 10/781,214; 10/781,250; and 10/781,284. Although the conflicting claims are not identical, they are not patentably distinct from each other because each recite either identical or substantially the same limitations.

Specifically, Application No. 10/780,775 comprises independent claim 1 which is essentially just a broader version of claim 1 of the instant application, whereby the primary difference is that the latter application refers to "transmission power level" while the instant application refers to "signal strength of transmissions". At the time of the invention it would have been obvious to one of ordinary skill in the art to select ascertaining based upon transmission power level instead of ascertaining based upon signal strength of transmissions since one of ordinary skill in the art readily recognizes that adjusting the signal strength of transmissions implicitly results in a proportional adjustment of the transmission power level.

Additionally, the claims of Application Nos. 10/780,804 and 10/781,214 are identical to claims 1-5 of the instant application with the exception that the preamble of the claims of the latter applications recite an "apparatus" whereas the preamble of the claims of the instant application recites a "program product". At the time of the invention it would have been obvious to one of ordinary skill in the art to implement a program product within an apparatus since one

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of ordinary skill in the art readily recognizes that a program may advantageously performed within an apparatus to provide functionality for the apparatus.

Further, the claims of Application No. 10/781,157 are identical to claims 1-5 of the instant application with the exception that the preamble of the claims of the latter application recites a “method” whereas the preamble of the claims of the instant application recites a “program product”, and the instant application includes the additional language of “logic for”. At the time of the invention it would have been obvious to one of ordinary skill in the art to utilize a program product for performing a method since one of ordinary skill in the art readily recognizes that a program product may advantageously perform steps of a method in order to provide a functional operation.

Finally, the body of the claims of Application Nos. 10/781,250 and 10/781,284 are identical to body of the claims of the instant application with the exception that the claims of the instant application recites the additional limitations of first and second channels. At the time of the invention it would have been obvious to one of ordinary skill in the art to remove the limitation of being restricted by a particular first and second channel configuration in order to implement the invention in a single-channel system since one of ordinary skill in the art readily recognizes that a communications system may comprise any number of channels depending upon the number of devices communicating within the system.

10. This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Conclusion

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.


12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Justin M. Philpott whose telephone number is 571.272.3162. The examiner can normally be reached on M-F, 9:00am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Huy D. Vu can be reached on 571.272.3155. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Justin M Philpott


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